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| APPLICATION NO.                                                                        | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/796,325                                                                             | 03/09/2004  | Cary E. Gloodt       | 13226-401           | 2098             |
| 43218                                                                                  | 7590        | 06/07/2007           | EXAMINER            |                  |
| SOMMER BARNARD ATTORNEYS, P.C.<br>ONE INDIANA SQ, SUITE 3500<br>INDIANAPOLIS, IN 46204 |             |                      | JIANG, CHEN WEN     |                  |
| ART UNIT                                                                               |             | PAPER NUMBER         |                     |                  |
| 3744                                                                                   |             |                      |                     |                  |
| NOTIFICATION DATE                                                                      |             | DELIVERY MODE        |                     |                  |
| 06/07/2007                                                                             |             | ELECTRONIC           |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

efspatents@sommerbarnard.com

ED

|                              |                 |                 |
|------------------------------|-----------------|-----------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)    |
|                              | 10/796,325      | GLOODT, CARY E. |
|                              | Examiner        | Art Unit        |
|                              | Chen-Wen Jiang  | 3744            |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 07 March 2007.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-21,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21,23 and 24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 20061025,20070307.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 1 and 6 recite the limitation "the hot water valve" line 14 of claim 1 and lines 3-4 of claim 6. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,5,12,13,15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Weingarten (U.S. Patent Number 2,296,128).

Weingarten shows a bathtub valve arrangement with a tub outlet 15 and shower outlet 35. Water to the shower is controlled independently from the tub outlet, and includes a thermostatic mixing valve 20 to control maximum outlet temperature to the shower. Valves 12 and 13 are provided to control flow into manifold 14, and valves 16 and 17 control flow to the shower pipe 35 (col. 2, lines 2-12). The outlet 15 is connected to a bathtub faucet and fill member is inherent in the system. In regard to Applicant's asserts that Weingarten fails to disclose a thermostatic

valve coupled to the hot water supply pipe at a location upstream of the hot water control valve, Examiner respectively disagrees. Weingarten discloses the thermostatic valve 20 located at the upstream of the hot water control valve 12. The hot water control valve only controls the supply hot water to a transverse mixing pipe 14, therefore, the downstream of the hot water control valve 12 includes pipe 14 and outlet 15 and the thermostatic valve 20 is at the upstream of the valve 12.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 2,4,9,11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weingarten in view of Fraser (US 3105519).

Regarding claims 2 and 4, Weingarten teaches a thermostatic tempering valve comprising a mixing chamber (see Figure 2), adapted to intermix hot and cold water (column 3 lines 25-35). He further teaches the thermostatic tempering valve is connected to the cold water supply and

spout, and that the thermostatic valve supplies water to the spout. However, Weingarten fails to explicitly teach the thermostatic tempering valve 71 is pressure balanced. Fraser teaches a pressure balanced mixing valve 19 for use in shower bath installations (column 1 lines 12-22). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the pressure balanced mixing valve of Fraser into the bathtub of Weingarten to advantageously maintain a constant water temperature in the event pressure fluctuations occur while taking a shower. Pressure fluctuations due to activities such as flushing the toilet can lead to a sudden drop or increase in shower water temperature and can lead to scalding due to hot water, or other injuries due to excessive cold water.

Regarding claims 9 and 11 Weingarten in view of Fraser teaches a bathtub capable of performing the method of claim 9 as recited. Weingarten teaches a thermostatic mixing valve 71 with an output 67 and plurality of inputs 65 and 64 fluidically connected to a freestanding bathtub faucet 68. He further teaches a hot and cold water supply, 64 and 63 respectively, fluidically connected to the thermostatic mixing valve via pipes 64 and 63. He further teaches the mixing valve is capable of outputting water at a temperature below a predetermined maximum value (column 4 lines 9-25). Weingarten fails to explicitly teach the thermostatic tempering valve 71 is pressure balanced. Fraser teaches a pressure balanced mixing valve for use in shower bath installations (column 1 lines 12-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the pressure balanced mixing valve of Fraser into the bathtub of Weingarten to advantageously maintain a constant water temperature in the event pressure fluctuations occur while taking a shower; as flushing the toilet can lead to a sudden drop

or increase in shower water temperature and can lead to scalding due to hot water, or other injuries due to excessive cold water.

In regard to claim 16, Weingarten teaches all limitations of claim 15 as previously stated. Weingarten teaches a thermostatic mixing valve 71 with an output 67 and plurality of inputs 65 and 64 fluidically connected to a freestanding bathtub faucet 68. He further teaches a hot and cold water supply, 64 and 63 respectively, fluidically connected to the thermostatic mixing valve via pipes 64 and 63. He further teaches the mixing valve is capable of outputting water at a temperature below a predetermined maximum value (column 4 lines 9-25). Weingarten fails to explicitly teach the thermostatic tempering valve 71 is pressure balanced. Fraser teaches a pressure balanced mixing valve for use in shower bath installations (column 1 lines 12-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the pressure balanced mixing valve of Fraser into the bathtub of Weingarten to advantageously maintain a constant water temperature in the event pressure fluctuations occur while taking a shower; as flushing the toilet can lead to a sudden drop or increase in shower water temperature and can lead to scalding due to hot water, or other injuries due to excessive cold water.

8. Claim 3,6-8,10,14,19-21,23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weingarten in view of Sandham (US 917157).

Regarding claims 3,6,8, and 10 Weingarten teaches all limitations of claim 1 and 9 as previously stated. However, he fails to teach a hand held shower sprayer with a flexible hose fluidically attached to a hot and cold water supply. Sandham teaches a bathtub with a hand held sprayer 20, capable of being used as a showerhead, and flexible hose 20 connected to a hot and

cold water supply 12 and 11. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the spraying attachment of Sandham into the bathtub of Weingarten to advantageously allow for the showering of an infant or pet, whom cannot handle the high water speed and pressure of an overhead shower attachment. He further teaches an actuation valve 13 for the spraying attachment (column 2 lines 89-95).

With regard to claim 14, Weingarten teaches all limitations of claim 12 as previously stated. However, he fails to teach a fill member that is a sprayer. Sandham teaches a bathtub with a hand held sprayer 20 connected to a hot and cold water supply 12 and 11. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the spraying attachment of Sandham into the bathtub of Weingarten to advantageously allow for the showering of an infant or pet, whom cannot handle the high water speed and pressure of an overhead shower attachment. He further teaches an actuation valve 13 for the spraying attachment (column 2 lines 89-95).

In regards to claim 19-21, Weingarten teaches all limitations of claim 12, however does not teach a diverter valve. Sandham does not explicitly teach a diverter, however one of ordinary skill in the art would have known to connect a diverter is between the hot and cold water supply and the hand held shower sprayer sections as Sandham teaches water may enter the tub, be discharged through spraying disks, or through the flexible hose from the hot and cold water supply via the control valve 13 (column 2 lines 89-95). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the diverter of Sandham into the bathtub of Weingarten to enable water to be diverted from a single hot and cold water supply

to the spout, hand held shower sprayer or additional attachments via only one valve, instead of having to use a separate valve for each attachment.

With regard to claim 23, Weingarten teaches all limitations of claim 22 and further teaches a bathtub configuration with secondary hot and cold water control valves 16 and 17 with the anti-scald valve connected to them, see Figure 1.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-21,23 and 24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5,8-13 (amended 2/13/2007) of copending Application No. 10/704,086. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim the same limitations with different combinations and languages.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Conclusion*

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809. The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Chen-Wen Jiang  
Primary Examiner

